
WHISTLE BLOWING: NEED OF THE HOUR FOR CORPORATE GOVERNANCE

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OVERVIEW

The term "whistle blowing" has multiple definitions. It can be used as a kind of free speech, a deterrent to corruption, or a process to settle conflicts within the company (David Banisar, 2006). Whistleblowing now has many different meanings as a result of this.

"An act of a man or woman who, believing that the public interest overrides the interest of the organisation he serves, blows the whistle that the organisation is engaged in corrupt, illegal, fraudulent, or harmful activity" is how American consumer activist Ralph Nader defined the term for the first time in the modern era in 1971.

Our group has determined that, given the variety of whistleblowing practices, the term "whistle blowing" shall be defined as: "the disclosure of organisation members' (former or current) disclosure of illegal, immoral, or illegitimate practises under the control of their employers to persons or organisations that may be able to take action." The most recent definition of whistleblowing, however, was "the reporting by employees or former employees of illegal, irregular, dangerous, or unethical practises by employers."

This definition relates to the revelation of unethical or immoral business practises by current or former employees to individuals within the organisation who may be able to rectify the situation, as well as to persons outside the organisation who may be able to do the same. This disclosure is made by a person with privileged access to organisational data or information.

A minimum of four of the following elements must be present while blowing whistles:

1. The Blower Whistle
2. The Act for Whistleblowing

3. The recipient of the complaint, or the party to whom it is made, and lastly
4. The entity that the complaint is directed towards

Near and Miceli (2002) state that whistleblowing is usually viewed as a process rather than an actual event in which an employee reports fraud or unethical activity on the part of the company to their employer or other parties, such the government.

A whistleblower is an individual or group that, in accordance with confidentiality regulations, discloses information about improper or illegal action. Whistleblowers might be current or prospective employees, contractors, vendors, customers, or members of the public. There are two types of whistleblowing: internal and external.

Internal Disclosure of Fraud

- Internal whistleblowing, sometimes referred to as "skipping hierarchies," is the practice of an employee reporting unethical or irregular activity to an oversight or auditing department instead of the board directly. The information is delivered to the appropriate person who can handle it appropriately in this way.
- Internal whistleblowers, on the other hand, are usually more conscious of unethical activity, but they could also be more fearful of the consequences of coming forward—like losing their job or being shunned by the company.

External Blowing of Whistles

- External whistleblowing refers to the obligation to report internal whistleblowers beyond the organization's boundaries. It means that the agent reports unethical or improper activity to a third party, like a supervisory board, regulator, or ombudsman.
- On the other hand, those who come forward outside the organisation may not be as worried about the consequences of coming forward or if there is any unethical activity at all in that establishment. It is also possible that they are unaware of the extent of unethical activity.

The Securities and Exchange Board of India (Listing Obligations and Disclosure

Requirements) Regulations 2015 require companies that are listed on an accredited stock exchange in India to establish a reliable whistleblower mechanism that permits stakeholders, including individual employees and their representative bodies, to freely express concerns about unethical or illegal practices in such companies.

The Whistleblowers Protection Act of 2011 provides protections for people who expose misconduct (that is, people who disclose information in the public interest about a corruption incident, a deliberate abuse of authority, a deliberate misuse of discretion, or a criminal offence done or attempted by a public worker). Although the whistleblower must expose their identity in order to make the disclosure, the relevant authorities are legally obligated to preserve the whistleblower's anonymity and shield them from retaliation. Although the government passed the Whistleblowers Protection Act, it has not yet been implemented. The Ministry of Personnel, Public Grievances and Pensions has made it clear that additional revisions to the bill might be necessary before it can be put into effect.

Although most organisations provide internal rules and initiatives to safeguard whistleblowers, those who disclose in the private sector are not protected by the law.

The government has authorised the Central Vigilance Commission (CVC) to be the designated agency for receiving and handling written complaints about allegations of corruption or abuse of authority made by staff members of the following organisations:

- any business established under federal law;
- local governments controlled by the government;
- companies, associations, or societies that are owned by the government.

In discussing whistleblowing in its most fundamental sense, it is important to understand corporate governance and its history. It has received a lot of attention on a global scale.

First, let us clarify what corporate and governance entail. The Webster Dictionary defines "corporate" as an organisation having corporate traits. A company is a separate legal body from the person or people who were granted the charter forming it, and it has many of the same rights as an individual. Governance is defined by the Webster dictionary as the exercise of

power. The Greek term *gubernare*, which meaning to rule or steer, is the root of the English word governance.

Sir Adrian Cadbury, the chair of the UK's Committee on the Financial Aspects of Corporate Governance, defined corporate governance as "the system by which companies are directed and controlled" in a 1992 report. A broader definition was given by the Organisation for Economic Cooperation and Development (OECD 2004). Corporate governance refers to a set of interactions that take place between a company's shareholders, management, board, and other stakeholders. A notion known as "corporate governance" governs how companies are run, overseen, managed, and controlled. It also provides the framework for establishing the goals of the company and the methods for accomplishing them as well as performance evaluation. The importance of corporate governance and how it relates to business management are clearly illustrated by these two definitions.

The fundamental ideas of corporate governance are simple, despite the concept's complexity. The core principles of corporate governance are responsibility, accountability, transparency, and fairness.

The Advisory Board of the National Association of Corporate Directors (NACD), New York, defines corporate governance as "ensuring that long-term strategic objectives and plans are established and that the appropriate management structure (organisation, systems, and people) is in place to achieve those objectives, while at the same time ensuring that the structure functions to maintain corporation's integrity, reputation, and responsibility to its various constituencies."

Consequently, corporate governance consists of two primary elements:

- a) A long-term collaboration including management incentives, checks and balances, and communications between management and investors
- b) Transactional relationship containing concerns of authority and disclosure

Best practices in corporate governance include defining what good corporate governance is, defining the goals and responsibilities of the board and its committees, defining their structure, examining preferred internal systems, and establishing disclosure requirements.

Commercial fraud, both local and foreign, is where corporate governance really got its start. The junk bond controversy in the US and the collapse of Maxwell, BCCI, and Polypeck in the UK led to the formation of the Treadway Committee on Corporate Governance in the US and the Cadbury Committee in the UK. The Satyam scam led to a very significant breakthrough in corporate governance in India.

In actuality, globalisation and heightened competition are what gave rise to the relatively recent idea of corporate governance. In addition to having to follow strict accounting, control, and reporting guidelines, the board of directors considers the connections between the many stakeholders when deciding on the business strategy and performance. Strong relationships between the corporation's different members as well as the board, management, shareholders, and other stakeholders are also required.

INDIAN CORPORATE GOVERNANCE

The Confederation of Indian Industry has long backed India's corporate governance movement. In April 1998, they released "Desirable Corporate Governance: A Code," the Task Force's report. It included several suggestions for the highest calibre corporate governance procedures. It is true that the Kumar Mangalam Birla Committee's report included most of the code created by the Confederation of Indian Industry, and that in its August 26, 2003 circular, the Securities and Exchange Board of India, also known as "SEBI," revised the listing agreement's clause 49 to amend the Principles of Corporate Governance. The company is required by the incorporated principles to establish a Whistle Blower Policy in order to safeguard the unnamed reporter.

The main objective of the policy as mentioned is to support staff members of the specific organisation and provide them with a means of informing management of any illegal, unethical, or improper activities that may be occurring there. This policy describes the channels for employees of the company to report internal abuses and provides them with safeguards. It seemed that these voluntary standards were not having the desired effect, and several cases of corporate fraud ensued. People are reevaluating our corporate governance norms and how industry may progress by voluntary initiatives in light of the Satyam tragedy.

Given this, the CII formed Task Force 4, led by Mr. Naresh Chandra, in February 2009 to provide suggestions on how to improve corporate governance practices and standards in both

word and spirit. This task force made several recommendations aimed at improving corporate governance standards.

Recently, the listing agreement's clause 49 was changed to require whistleblower protection policies for listed companies. The Securities & Exchange Board of India (SEBI) has mandated that all listed corporations establish a monitoring mechanism by October 1, 2014, to identify employee and director fraud. The auditors are tasked with informing the central government of any fraud instances within a specific time limit, and the audit committee and independent directors are responsible for ensuring that the vigil system is "sufficient" and "functioning." Not included are the six companies that are still not on the list. Since then, a number of Indian companies have put in place whistleblower programmes to provide the required safeguards for their workers. It provides mechanisms via which external or internal auditors, together with other interested parties, can notify management of any issues they feel could go against or be in conflict with the company's basic corporate values. By using these policies, a person can report fraud to their organization's audit committee without first getting their superiors' permission. It also offers safeguards for the innocent person from harassment. Many businesses have incorporated a whistleblowing policy into their governance. This could have a number of reasons. Good whistleblowing regulations deter criminal conduct, allow wrongdoing to be disclosed without fear of reprisal, aid in the early detection of delinquency, and aid in averting major, terrible disasters. Policies protecting whistleblowers are also an essential part of ethics, compliance, and internal controls programmes because they show investors and law enforcement that a business has taken action to stop, spot, and deal with dishonest activity.

In order to uphold the highest standards of moral, ethical, and legal business conduct and its commitment to open communication, the Heritage Food (India) Ltd. whistleblower policy was adopted. It also aims to give employees a chance and a channel to voice concerns and approach the Audit Committee in good faith. In the event that employees observe unethical and improper practises or any other wrongful conduct in the Company, the policy also provides the necessary safeguards for protection.

BLOWING WHISTLES AND WHISTLE BLOWER

In the *Houston Chronicle Pub. v. Winters* case. J. Doggett and Co. first proposed the idea of a whistleblower. Its original home is the United Kingdom. The expression bears the name of the police constables known as "English bobbies," who would sound their whistles to report

suspicious activity. In order to safeguard the public interest, whistleblowing aims to alert the public and law enforcement to any unlawful activity or crime. The claimed activity might break a law, rule, or regulation, directly jeopardise the public interest, or do both. Fraud or corruption is a further option. It could be addressed to someone within the organisation, or it could be addressed to someone outside the organisation, like the media, law enforcement, authorities, or a group with a stake in the outcome.

To put it another way, whistleblowing is the act of someone within or outside of an organisation revealing information that would not otherwise be available to the public, usually regarding organisational actions that are contrary to the interests of the public.

"Whistle-blowing" is defined by Wikipedia as the act of alerting the public or a public authority to suspected unlawful or dishonest activities occurring within a government agency, a public or private organisation, or a business.

A whistle-blower is someone who reports misconduct, fraud, corruption, or bad management. Employees are usually the ones who find out about fraud or corruption within a company or organisation since they have access to the sensitive information of the organisation. As a result, they would be the first to arrive and learn about all the illicit activities occurring inside the walls. Thus, in order to safeguard the public interest, a whistleblower's mission is to reveal any wrongdoings, corruption, or fraud within a corporation.

However, because it is illegal for any company to disclose institutional information, whistleblowers frequently face retaliation, which can include losing their job or even being physically harmed. Whistleblowers are often subjected to victimisation, including physical abuse and threats of death, in addition to harassment. This is when it becomes important to have laws protecting whistleblowers who take various risks in order to safeguard the public interest.

WHISTLE BLOWERS AND BUSINESS MANAGEMENT

The corporate governance framework includes the supervisory board, board committees, internal control framework, risk management framework, and whistleblower mechanism. The main objective of corporate governance is to maximise shareholder value while taking other stakeholders' interests into consideration. The understanding of the three main elements of

corporate governance—transparency, accountability, and treating all stakeholders fairly—is a prerequisite for this analysis and permeates the whole process.

Maintaining corporate governance is greatly aided by whistleblowers. A whistleblower's job is to notify higher authorities or the media of any instances of mismanagement in a company or organisation that could jeopardise public policy or the interests of stakeholders. By doing this, a whistleblower safeguards the interests of all parties involved and resolves any problems that might arise from such subpar management. Therefore, it may be argued that a whistleblower mostly safeguards an organization's or company's internal structure.

Thus, encouraging whistleblowers has several benefits. It lessens the possibility that the reputation of an organisation may suffer and aids in fostering a culture of openness, accountability, and transparency at work. An employee's issue is initially brought to the attention of the Ombudsman, who could be a compliance officer, legal adviser, or audit committee member. The internal whistleblower procedure consists of five steps. This would lead to an initial investigation, and if it is found that the complaint is baseless or inconsequential, it might be dismissed, bringing an end to the proceedings. On the other hand, should the complaint turn out to be accurate, a committee of inquiry can be established. This committee can then carry out further investigations and, in light of the results, take appropriate legal action, if needed, against the offender. Internal whistleblowing is the safest method, but external whistleblowing is the extremity of the idea.

The media extensively covered the recent accounting problems, and Time magazine highlighted whistleblowers by naming Cynthia Cooper of WorldCom, Sherron Watkins of Enron, and Coleen Rowley of the FBI as its "Persons of the Year" in 2002.

India's Whistleblowing Policy Framework

The general agreement of the list's corporate governance requirements was amended by the SEBI Circular of August 26, 2003. The revised guideline now requires companies to develop their own whistleblower programmes. This tactic keeps management in the dark about every grievance an employee has regarding a company's flaws. Section 49 of the Listing Agreement was revised by SEBI in August 2003 to incorporate these firm policies. The text of clause 49 is now found in Regulation 18 of the SEBI Regulations. Shares and listed firms have an agreement known as Regulation 18. The list agreement mandates that all listed companies

establish a process known as a whistleblower policy. permits its employees to report to the board through a forum any kind of carelessness, fraud, criminal activity, or other malfeasance.

According to the articles of incorporation, any employee who wishes to report any type of fraud or wrongdoing must be able to see the Audit Committee. All personnel of the company need to be made aware of this information. The guidelines provided in Regulation 18 are meant to make the company's workers feel accountable and to let them know that being watchful is both their duty and their right. The employer pledges to protect the worker from harassment of any kind and to prevent wrongful termination in the event that the worker exercises their illegal whistleblowing rights.

In addition, every listed company must set up a mechanism to monitor directors and employees and disclose any fraud or misuse in accordance with Section 177 of the 2013 Companies Act. The company also describes the norms of behaviour for the senior management and other senior management personnel.

Employees are made aware of their social responsibilities through the whistleblowing system, which aims to strike a balance between law and order. Eliminating the gap caused by strong people being stigmatised out of fear of retaliation could be a useful goal. Employees who choose to voice their disapproval of the wrong companies' behaviour often face threats and exploitation in addition to the possibility of losing their jobs. This concern of potential reprisals for violating privacy policies in their job contracts.

When anything they are saying turns out to be untrue, employees sometimes hesitate to speak out for fear of being humiliated. Whistleblower difficulties are obvious in cases when opposition to the illegal business practises of their organisations has resulted in numerous deaths in India.

IMPROVING THE INDIAN MECHANISM

A growing percentage of corporate crimes cause a loud whistle to blow for an hour. The company's performance is of great interest to many parties, and the economy is greatly impacted by its excellent governance. One of the primary shortcomings of the Whistle Blower Protection Act of 2011 is its restricted structure. The current statute only applies to people who disclose misconduct or corruption involving the State in public. It allows a strong formation of

public servants to voice issues, although corporate employees are not subject to its restrictions. The law needs to be taken into account when it comes to both public and private personnel.

The aim of this Act is to protect individuals who might face consequences in the absence of an employer-employee relationship in the event that any form of organisational misconduct is revealed.

Another issue that needs to be fully discussed is the Whistle Blower Protection Act's descriptive form, which varies depending on how it is applied to public works projects (PSUs). The Act protects anybody who discloses misbehaviour in government offices, programmes, or agencies and provides a mechanism to investigate allegations of official corruption and power abuse. As it is, this Act only applies to public personnel and allows disclosures that are prohibited by the Official Secrets Act of 1923.

Even though PSUs usually do not fall under the jurisdiction of public servants, it can be argued that they meet the requirements and are subject to the same laws. The Supreme Court ruled that executives of state-owned companies or public works are not immune from fines under Section 197 of the Criminal Procedure Code, even though a public act is defined as "State" under Article 12 of the Constitution. The introduction of the PSU whistleblower programme will raise awareness about cooperative governance in India.

If someone chooses to put the interests of the public above those of a corporation, they need to be in serious danger of retaliation. The government should provide information to employees as a means of encouraging them to disclose corrupt practices they become aware of. These employees should be paid for disclosing information because they often jeopardise their employment. Restitution for any damages should be provided, and the victim's property should be restored to its pre-disclosure state. These people also need to be protected against information that has been improperly disclosed. Section 17 of the Whistle-Blowers Protection Act, 2014 addresses both mala fide penalties and fraudulent reporting/false reporting. To encourage people to take chances, employees shouldn't be reprimanded for negative media coverage.

It is imperative to have a methodical process that ensures the prompt detection of inappropriate conduct. The disclosure process should be easy to understand. A proper system to encourage and facilitate internal disclosure of wrongdoing procedures should be established by

legislation. Obtaining legal assistance should be made straightforward as part of the protocol to promote disclosure and reduce misunderstandings. Early exposure should be permitted by legislation in order to mitigate the harm caused by major corporate fraud. Furthermore, disclosures ought to be included in reports with a higher level of knowledge in order to promote transparency and corporate democracy. A special committee should be formed to uncover this and establish a whistleblower procedure within a different institution.

IMPORTANCE OF REGULATIONS AND WHISLTE BLOWING

By giving representatives a platform to raise concerns and lay out a plan for handling dishonest activity, whistleblower rules and processes are significantly contributing to the projected wave of whistleblowers approaching with mistrust. When anything unethical or downright illegal occurs in a firm, employees are usually the first to find out about it. But since they are afraid of failing their friends, their employment, or their future advancement, they will also often be the last to rise. Because laws and norms protect them, whistleblowers can disclose unethical or unprofessional behaviour by employees without worrying about losing their job, their friendship, or their chance to advance in the future.

Whistleblowing laws and guidelines can also give workers peace of mind that they won't be punished or treated unfairly for voice concerns in a way that respects common decency. It explains why, even in cases where informants behave decendementally, the great majority of businesses punish them by firing, suspending, or accusing them of breaking workplace policies. Whistleblowing policies and procedures are therefore crucial to shielding workers who expose colleagues involved in criminal or fraudulent activities from reprisals by government agencies. focusing on employees in order to force the whistleblower via the stronghold of his acknowledged "consumption," which protects it from reprisal strikes. In addition, whistleblower policies and procedures enable executives to be notified early on about instances of improper behaviour. Employees are encouraged by whistleblowing rules and regulations to report unethical, inappropriate, or unlawful activity by supervisors to the association's top executives. Therefore, before it may hurt the business or be discovered by the public, the corporation will have the opportunity to face down a major crime and handle the dishonest action internally. Policies and processes pertaining to whistleblowing also aid in the growth of an honest, transparent, and accountable culture.

Since all employees should be compelled to follow by the principles and guidelines, the whistleblowing rule and guideline may help the organisation maintain a positive culture by lowering the likelihood of impropriety and risky situations that could lead to an association declaring financial insolvency. Encouragement of staff members to report unethical activity to the relevant board level ensures that the rules and regulations are set to maintain moral guidance within the company. This would reinvigorate a culture of transparency, accountability, and honesty while also making ineffectual institutional game plans more successfully implemented.

PRAGMATIC ISSUES A WHISTLE BLOWER FACED

When an employee of the organisation engages in dishonest or deceptive activity, their main defence is that they knew that reporting it would not make a difference. Additionally, there is a difference in what is expected of the reviewer's job. Allowing whistleblowing to occur when it shouldn't—in the opinion of an outside reviewer—puts a few important association components at jeopardy. Only in this situation can an external auditor be of use, as their job is to verify that the financial summary is clear and reasonable, not to look into and find deliberate falsification. It is unfortunate that some people use fear of losing their jobs as an excuse for not reporting wrongdoings. The review commission claimed in 1994 that they had learned that employees and internal review personnel might have been able to differentiate between the 6,000,000 scams that they had found during the preceding long period of time. During the course of the investigation into these faculty members and inside review staff, it was revealed to them that they were terrified of losing their jobs if they reported abuses or denigration to their directors. Aside from that, those who are more affected by the company would frequently wait to report something. Highly educated people usually agree that they are trustworthy, certain, and willing to be connected with their assertions, therefore this is not typical of them. They are not afraid of losing their employment because they are very talented and do not depend on the firm to thrive. Staff members who come forward with information are under growing pressure to retract their statements and cease releasing fresh material.

In addition, the administration might keep looking for ways to catch the whistleblower by providing them with alluring incentives if they saw that they were acting destructively. The informant would also be subject to disciplinary action, such as having their employment obligations removed.

An additional rationale for not sounding the alarm when association staff members notice any

fraudulent presentation is the absence of easily accessible whistleblower mechanisms. When an employee notices a crime or extortion, they have no idea how to properly report it. Consequently, this restriction suggests that they would want to remain silent.